

**The College of New Jersey
Employment Agreement**

THIS EMPLOYMENT AGREEMENT ("Agreement") shall be effective as of, and retroactive to, the 1st day of July, 2007, and be by and between The College of New Jersey (hereinafter referred to as "The College") and Dr. R. Barbara Gitenstein (hereinafter referred to as "Gitenstein" or "President"). WITNESS

WHEREAS, The Board of Trustees ("the Board") of The College has determined that Gitenstein has been an exemplary President and desires that Gitenstein continue as President; and

WHEREAS, the Board, in order to induce Gitenstein to continue as President, has offered the terms and conditions set forth below of her continuing employment and desires to set forth those terms and conditions in an Employment Contract (herein "the Agreement"); and

WHEREAS, Gitenstein relies upon and accepts the terms and conditions set forth in this Agreement and desires to continue as President in accordance with such terms and conditions: **NOW, THEREFORE**, in consideration of the covenants and agreements herein contained, The College and Gitenstein covenant and agree as follows:

- I. **EMPLOYMENT.** Pursuant to the terms and conditions of this Agreement, The College agrees to employ Gitenstein as its President and Gitenstein, in reliance thereto, agrees to serve as President and to render services to The College as set forth herein.
- II. **TERM.** In accordance with Section IX of this Agreement, Gitenstein shall serve as President at the pleasure of the Board.
- III. **DUTIES.** The President shall be responsible for the management, superintendence, and improvement of The College to the utmost of her ability and shall do and perform all such services, acts, and things connected therewith as the Board, by its Bylaws, has delegated to her, and which are of a nature properly belonging to the duties of a college president. Participation in any outside organizations, associations, clubs or groups shall be consistent with the importance and dignity of the presidential office.

IV. COMPENSATION AND BOARD REVIEW PROCEDURE.

(a) BASE SALARY. For the initial year beginning July 1, 2007 and ending June 30, 2008, Gitenstein's Base Salary shall be \$265,000.00. Salary adjustments for each of the four succeeding years commencing as of July 1 shall be based on annual performance appraisals conducted by the Executive Committee of the Board. Annual salary adjustments recommended by the Executive Committee and approved by the full Board shall be made effective July 1st of each year of these four years. Each time a salary adjustment takes place, the adjusted salary shall then become the Base Salary for purposes of this Agreement.

(b). **BONUS PLAN** Absent financial exigencies or other reasons which the Board deems compelling, the Board shall have the discretion, but not the obligation, to grant Gitenstein a Bonus, payable as of June 30 during each year while this Agreement remains in effect, if the Board, pursuant to the process set forth in D below, determines that Gitenstein has met or exceeded the goals and benchmarks established for the one-year period ending as of that June 30. Bonuses awarded on this basis may not exceed an amount equal to 10 percent of the President's Base Salary. Bonus criteria that the Board shall take into account include, but are not limited to, (1) maintaining the high reputation of The College; (2) maintaining quality of students and faculty at The College; (3) maintaining and enhancing academic outcomes such as graduation and retention rates that demonstrate high standards of excellence ; (4) maintaining and enhancing the reputation of The College for innovation in the development of new and creative programming; (5) maintaining and enhancing the diversity of qualified students, faculty, management and vendors; (6) enhancing fund raising from alumni as well as the private sector; and (7) maintaining the effective allocation of resources to support the mission of The College.. In determining the amount of the Bonus, if any, the Board will apply the following three tier approach. If basic expectations are achieved, a Bonus payment in the amount of 3% of the Base Salary shall be made. If basic expectations are exceeded, a Bonus payment equal to 6% of the Base Salary shall be made unless the Board determines that performance was so extraordinary, in which case there shall be a Bonus payment in the amount of 10% of Base Salary.

(c). **RETENTION INCENTIVE PAYMENT PLAN**. The Retention Incentive Payment Plan is a program to provide incentive for Gitenstein to remain with The College and thereby provide stability to The College's Chief Executive position. Therefore, in addition to the President's Base Salary and any Bonus, an additional 20% of the Base Salary for each year of this Agreement will be placed in an escrow account at the beginning of the Term and thereafter at the beginning of each of the remaining one year periods covered by this Agreement and earn quarterly interest based upon the applicable federal rate under Internal Revenue Code Section 7520 as published in the Federal Register. At the end of each year of service as President under this Agreement, the monies deposited at the outset of that year and the interest earned thereon shall be paid to Gitenstein by the College within 30 days after completion of each such year. If Gitenstein voluntarily elects to leave prior to completing any full year of service under this Agreement, this Retention Incentive Payment Plan shall be deemed canceled, and any obligations by The College as herein stated under this subparagraph (c) shall thereafter be deemed null and void

(d). **REVIEWS AND NEW AGREEMENT**. There shall be two levels of review of the President's performance: (1) an annual written review and (2) an external review commenced, completed and communicated to Gitenstein no later than her completion of four years of service under this Agreement

- (1) An internal annual written review, based on the criteria set forth in (b) above and goals prepared by the President and approved by the Board, will occur for each July 1 through June 30 period of each year of this Agreement. As part of this annual process, the President shall, no later than 30 days prior to the full Board meeting in each June, present a written report to the Executive Committee of the Board regarding the achievements accomplished during the year under review and her specific goals for the following year beginning July 1. Said report will be presented by the Board Chair to the full Board at the June meeting. As part of the review at these Executive and Regular Full Board meetings in June, the Board shall make a determination in regard to whether a salary adjustment, pursuant to (a) above, and a Bonus payment, pursuant to (b) above, shall be made.
- (2) The Board, through the appointment of an outside consultant, approved by the President, shall commission the external review of the President's performance of her duties and responsibilities. As part of the communication of this external review, the Board shall inform Gitenstein as to whether the Board is interested in negotiating a new agreement with Gitenstein. If the Board is so interested and if Gitenstein desires to serve under a new agreement, the Board and Gitenstein shall immediately commence such negotiations with the intent to reach a new agreement no later than December 31, 2011.

V. **BENEFITS.** The President shall receive the following benefits and any other benefits accorded to Directors, Officers, Faculty or Administrators of The College:(a). Insurance/Indemnification. The College shall provide Gitenstein with directors' and officers' liability insurance coverage with the same terms and conditions applicable to trustees and/or officers. (b). Health and Prescription Drug Insurance. The College shall provide health and prescription drug insurance coverage for Gitenstein, her spouse and any eligible dependents under the New Jersey State Health Benefit Plan. After ten (10) years as President, including all the years she has served as President prior to this Agreement, unless terminated for Cause in accordance with Section IX below, Gitenstein, and her spouse, shall receive lifetime health and prescription drug insurance benefits under the New Jersey State Health Benefit Plan. If The College is unable to provide this benefit to Gitenstein under the New Jersey State Health Benefits Plan, The College shall obtain and pay for equivalent lifetime health and prescription drug insurance benefits under another plan or policy.(c). Retirement. Gitenstein will participate in The College's TIAA/CREF retirement plan. Gitenstein will contribute an amount equal to five percent (5%) of her Base Salary and The College will contribute an additional amount equal to eight percent (8%) of her Base Salary to this TIAA/CRFF retirement plan. However, in no case shall The College be required to contribute an amount which would cause the total of the Gitenstein and The College contributions to exceed the maximum total authorized by law. (d) Death or Incapacity. If at anytime during the Term of this

Agreement, Gitenstein dies or becomes so incapacitated as to be unable to perform her duties hereunder, and she has not breached any of the provisions of this Agreement, Compensation and Benefits including (i), pursuant to Section IV, the Base Salary for each year of the Term and the Retention Incentive deposit and interest for each year of the Term , (ii) employer retirement contributions and all other benefits under this Section V, and (iii) one time additional payment under Section VII(b) shall continue to be paid ,or made available, to her during her time of disability but no longer than June 30,2012 or to her estate as if she had served until June 30, 2012, except that the Base Salary component will not be increased during either the period of incapacity or for any year succeeding the date of death.(e) Automobile. During the period of this Agreement, The College will provide Gitenstein with a leased automobile (full-sized or comparable). Gitenstein will be entitled to use the automobile for personal as well as professional use. The College will insure the vehicle and the driver and passengers therein, regardless of whether the vehicle is being used for professional or personal use, in coverage at least equal in amount and scope as that provided under Policy Number BAP 2953601-06, provide maintenance service and reimburse Gitenstein for fuel and oil expenses. Gitenstein shall maintain records of use and mileage, separating professional use from personal use, providing such records to The College for its tax reporting purposes. Gitenstein shall be solely responsible for the payment of any federal income tax resulting from personal use of the automobile. The College will continue with its policy of replacing the automobile after every thirty-six (36) month use by Gitenstein. In the event The College terminates Gitenstein for cause, or in the event Gitenstein voluntarily terminates this Agreement, Gitenstein shall return the automobile within sixty (60) days of the last day of her employment. As part of the Post Agreement Benefit under Section VII below or in the event of permanent disability, The College will purchase and transfer the title of the leased automobile to Gitenstein. The transfer of the title to Gitenstein shall be a taxable event consistent with the book value of the vehicle at the time of this transfer and all transfer and income taxes incurred shall be paid by Gitenstein individually.

- (f). College Entertainment. The College shall pay initiation and monthly dues for Gitenstein in area clubs acceptable to both Gitenstein and the Board. The College shall also pay or reimburse Gitenstein for reasonable expenses associated with College- related entertainment.
- (g). College Travel. The College shall reimburse Gitenstein for the reasonable and necessary expenses of travel. Such expenses include her spouse under circumstances where the spouse is expected to participate.
- (h). Life Insurance. During the term of employment, The College will provide Gitenstein with term life insurance equal to three-and-one-half (3-1/2) times 100% of the sum of the Base Salary and the Retention Incentive Plan monies deposited in the escrow fund at the beginning of the applicable July 1 to June 30 year of this Agreement.

- (i) Sick Leave. Gitenstein will be entitled to sick leave in accordance with The College's personnel policies. Further, Gitenstein shall be entitled to compensation for unused sick leave in accordance with The College's personnel policies.
- (j) Vacation. Gitenstein shall be entitled to the same amount of vacation days annually as granted to those of rank of Vice President or above at The College. Unused vacation days at the end of any year may be taken during the subsequent year. Unused vacation days remaining at the end of the Term of this Agreement or Gitenstein's separation from The College may be accumulated up to sixty (60) days and compensation shall be due Gitenstein. The College strongly encourages Gitenstein to use her available vacation days annually.
- (k) Sabbatical Leave. In view of the length of time that Gitenstein has already served as President prior to the commencement of the term of this Agreement, and has never taken a Sabbatical leave, Gitenstein shall be entitled to a Sabbatical, during the term of this Agreement, subject to the following conditions:
 - i. The Sabbatical shall not be for more than a total of six (6) months, but can be taken over several shorter time periods totaling six (6) months rather than all at once.
 - ii. The specific time period and plan for any Sabbatical for Gitenstein shall be subject to approval by the Board, which approval shall not be unreasonably withheld.
 - iii. Gitenstein shall be entitled to full Compensation under Section IV A and B above and full benefits under Section V and VIII during any such Sabbatical;
 - iv. Additional sabbatical leave to that provided above may be allowed the President, at any time by The College, at such time by and upon such conditions as are deemed appropriate. Such additional leave shall be granted at the sole discretion of the Board.
 - v. The taking of any Sabbatical under this Section 11 shall not disqualify Gitenstein from receiving Bonus or Retention Incentive Payments.
- (l) **RELOCATION EXPENSE.** Upon the completion of five years of service under this Agreement if Gitenstein should determine to relocate, or sooner if The College terminates Gitenstein other than for Cause, The College shall reimburse Gitenstein for reasonable relocation expenses at the completion of these five years of service to any location in the United States, including but not limited to the

cost of packing and moving, storage, travel and interim lodging and food. However, in no case shall this amount exceed \$15,000 plus an upward adjustment in an amount equal to the percentage increase in the Consumer Price Index for the Mercer County region during the period from July 1, 2007 to June 30, 2012,

VI. HOUSING. As a condition of Gitenstein's role as President, and to provide appropriate space for hosting college-related social events, Gitenstein shall be required to reside at the residence currently located at 110 Murphy Drive, Pennington, NJ 08534. Furnishings for the public areas shall be provided by The College. The College shall be responsible for all reasonable costs for maintaining the premises and the grounds and for providing housekeeping services, supplies, utilities, cable television, telephones, and current computer technology and high-speed Internet connections. Catering services and entertainment shall also be provided for college related events hosted in the home.

VII. POST-AGREEMENT BENEFIT. In the event that Gitenstein completes five years of service under this Agreement , Gitenstein shall have the following option at the end of this five year period:

(a). Assume and perform as a tenured Distinguished Professor of English (12-Months) or other similar non-administrative, academic or research position with the following conditions:

1. For the first year in this position Gitenstein shall undertake a Sabbatical in accordance with a plan approved by the Board, which approval shall not unreasonably be withheld. During this first year Gitenstein shall receive a salary equivalent to the sum of the Base Salary for the final year that she served as President. Thereafter, Gitenstein shall be assigned a salary equal to the maximum of the range established for Distinguished Professors (12 Months) and shall receive annual increases consistent with the applicable bargaining unit agreement. Gitenstein shall be required to reimburse The College for the salary paid her for the Sabbatical under this subparagraph 1 if she voluntarily leaves The College before performing as a Distinguished Professor of English for a period of 2 years after this Sabbatical.

2. Gitenstein shall be provided at least half-time clerical support;

3. The new position shall report to the Chief Academic Officer.

or

- (b) Receive a final additional payment in the amount equal to the sum of the Base Salary for the fifth year of service under this Agreement. Said payment shall be made by the College to Gitenstein no later than September 30, 2012.
- (c). Regardless of whether Gitenstein elects option (a) or (b) above, Gitenstein shall be entitled to the automobile benefit set forth in paragraph (e) of Section V above.

VIII. PHYSICAL EXAMINATION. The College expects Gitenstein to undergo a comprehensive physical exam once a year. Should expenses for the examination exceed or not qualify for coverage under The College's medical insurance coverage, The College will pay up to One Thousand Dollars (\$1,000.00) for the exam. The results of the Physical examination shall be privileged and confidential between the physician and Gitenstein.

IX. TERMINATION. Gitenstein serves at the pleasure of the Board. The Board may terminate Gitenstein from office at any time, with Cause or without Cause, based on a confidential vote of two-thirds (2/3) of the eligible voting members of the Board.

- (a) Cause: As used in this Section IX, the term "Cause" relating to Gitenstein shall only mean (1) misconduct, gross negligence or dishonesty in the performance of her duties hereunder; (2) her willful and continued failure substantially to perform the duties of the position; (3) her performance of any personal acts of dishonesty or breach of fiduciary duty involving personal profit; (4) any plea of guilty to or conviction of, or plea of *nolo contendere* to any felony; (5) excessive absenteeism other than for illness; or (6) any material breach of any provision of this agreement.
- (b) Termination With Cause: The Board shall have the right to terminate Gitenstein for Cause upon written notice to her of such determination, specifying the alleged Cause. Gitenstein shall have 30 days upon receipt of such notice to challenge such notice by commencing arbitration in accordance with the rules of the American Arbitration Association. In the event termination is not challenged or is upheld, Gitenstein shall not be entitled to any further compensation or benefits under this agreement.
- (c) Termination Without Cause: If the Board should terminate Gitenstein without Cause, Gitenstein shall be entitled to receive Compensation and Benefits equal in amount to what she would have received for Compensation under Section IV (a) and (c) and Benefits under Sections V, VI, VII and VIII for the period of time commencing as of the effective date of this termination and ending 365 days thereafter. This obligation shall remain effective even if Gitenstein obtains employment elsewhere except that the obligation for hospital, health, and medical shall terminate

if the new employment provides substantially similar benefits and continuation by The College would not result in any additional material hospital, health or medical benefit being provided. For purposes of this paragraph (c), "material" means having a value of \$500 per annum or greater.

- (d) Voluntary Resignation: Gitenstein shall provide at least 120 days written notice to the Board of intention on her part for a Voluntary Resignation. In the event Gitenstein elects to voluntarily resign, she will forfeit rights to further Compensation and Benefits after the effective date of her resignation. Further, if Gitenstein tenders her resignation at the Board's request rather than the Board terminating her With Cause, such a resignation shall not be considered a Voluntary Resignation. Instead, for purposes of compensation and other benefits, Gitenstein would have the same entitlement as she would have for a Termination Without Cause.

X. **PRIOR AGREEMENT.** To the extent that any Compensation or Benefits remain due and owing to Gitenstein under the previous Employment Agreement entered as of July 1, 2001, those obligations of The College remain in effect and they are not otherwise superseded or invalidated by this Agreement.

XI. **SEVERABILITY.** If any term or provision, or any portion thereof, of this Agreement, or the application shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application thereof of any provision to circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each such remaining term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law. As to any Compensation under Section IV (a), (b) or (c) or Benefit under Sections V, VI, VII or VIII deemed invalid or unenforceable, the College shall provide Gitenstein with additional remuneration equal in value to that which was deemed invalid or unenforceable.

XII. **INTERPRETATION** This Agreement shall be governed by and construed in accordance with the laws of the state of New Jersey without regard to conflict of law or choice of law principles. Each party accepts equal responsibility for the language herein. This Agreement shall be binding upon and enforceable by and against the parties' their respective heirs, executors, administrators, legal representatives, successors and assigns.

XIII. **NOTICE.** All notices shall be in writing, sent by overnight mail or certified or registered mail, return receipt requested or via telecopy to the numbers indicated below with a confirmation that the notice was properly transmitted and received, or hand delivered and receipted. The date of such notice shall be the date such notice is delivered or the date delivery is refused, as applicable. Until further notice is given of a change in address or addresses, all notices shall be sent as follows:

If to Gitenstein:

Dr. R. Barbara Gitenstein



With a copy to:

Leo Motiuk, Esq.
Windels Marx Lane & Mittendorf, LLP
120 Albany Street Plaza
New Brunswick, NJ 08901

If to The College:

Chair, Board of Trustees
The College of New Jersey
c/o Office of the President
PO Box 7718
Ewing, NJ 08628-0718

With a copy to::

David Gaynor, Esq.
Miller Porter Muller & Gaynor, P.C.
One Palmer Square
Suite 540
Princeton, NJ 08542

XIV. COMPLETE AGREEMENT. This Agreement constitutes the complete Agreement between the parties and incorporates all prior discussions, agreements and representations made in regard to the matters set forth herein. This Agreement shall not be amended, modified or otherwise changed except upon the mutual consent of Gitenstein and the Board. Any such amendment, modification

or change, to be effective, must be reduced in writing and signed by all parties to this Agreement.

This Agreement entered into as of the date set forth above by:

The College of New Jersey

By: 
Stacy Holland
Chair, Board of Trustees

Date: 10.10.07

R. Barbara Gitenstein
R. Barbara Gitenstein
President

Date: 11/2/07